

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 8, 2009 Session

WILLIAM ST. NAGY v. PATRICIA JEAN DUBOIS

**Appeal from the Circuit Court for Greene County
No. 02CV817 Kindall T. Lawson, Judge**

No. E2008-01891-COA-R3-CV - FILED JUNE 26, 2009

William St. Nagy (“Husband”) and Patricia Jean Dubois (“Wife”) were divorced in 2003. In March of 2007, Husband filed a motion asking the Trial Court to order Wife to reimburse Husband for an amount paid by Husband toward the parties’ joint federal income tax obligation for the year 2002. After a trial, the Trial Court entered an order on December 7, 2007 finding and holding, *inter alia*, “that the tax obligation to the Internal Revenue Service incurred by the parties prior to their divorce of forty one thousand eight hundred seventy six (\$41,876.00) dollars is a marital obligation...,” and ordering Wife to pay Husband \$18,762.00. Wife did not appeal this judgment. In July of 2008, Wife filed a motion seeking relief from the December 2007 judgment under Tenn. R. Civ. P. 60.02. The Trial Court denied Wife’s motion for relief under Rule 60.02. Wife appeals to this Court. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed;
Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Sandra Lee Stanbery-Foster, Greeneville, Tennessee for the Appellant, Patricia Jean Dubois.

Roger A. Woolsey, Greeneville, Tennessee for the Appellee, William St. Nagy.

OPINION

Background

After more than ten years of marriage, Husband was granted a divorce from Wife by order entered January 16, 2003. On March 28, 2007, Husband filed a motion seeking a court order requiring Wife to reimburse Husband “for one half (½) of the difference between what [Husband] paid and what [Wife] paid toward the parties’ joint income tax obligation for the tax year 2002.” The Trial Court held a trial on Husband’s motion for reimbursement, and then entered an order on December 7, 2007 finding and holding, *inter alia*, “that the tax obligation to the Internal Revenue Service incurred by the parties prior to their divorce of forty one thousand eight hundred seventy six (\$41,876.00) dollars is a marital obligation...,” that Husband had paid \$39,700.00 toward that obligation, that Wife had paid only \$2,176.00 toward that obligation, and that Husband was entitled to reimbursement from Wife in the amount of \$18,762.00.

Wife did not appeal the Trial Court’s December 7, 2007 order. Instead, on July 1, 2008, Wife filed a motion seeking relief from the December 7, 2007 order under Tenn. R. Civ. P. 60.02. In her motion, Wife alleged that she was entitled to relief under Tenn. R. Civ. P. 60.02(1) or (2) because the Trial Court had utilized what Wife asserted was an incorrect number for the parties’ tax obligation. Wife asserted that the Trial Court had mistakenly utilized \$41,876.00 for the amount of the indebtedness, which Wife asserted was only \$21,599.00. Wife’s Rule 60.02 motion argued, in part:

That it is plausible and arguable that the Court was misinformed, or out of inadvertence, mistake or fraud, used an outstanding tax obligation amount almost twice as high as that actually owed by the parties’ [sic] for their 2002 marital U. S. Tax debt or obligation in reaching its Order of December 7, 2007;....

A copy of the parties’ 2002 Income Tax Return introduced as an exhibit during the trial and included in the record on appeal shows that the parties’ total federal tax liability for 2002 was \$41,876.00, of which only \$21,599.00 remained due and owing to the IRS at the time that the return was filed.¹ The record on appeal contains neither a transcript nor a statement of the evidence from the hearing on Husband’s motion for reimbursement.

The Trial Court held a hearing on Wife’s Rule 60.02 motion and then denied the motion by order entered July 23, 2008. Wife appeals the denial of her Rule 60.02 motion to this Court.

Discussion

¹ The parties’ 2002 Income Tax Return was signed by a preparer on February 22, 2003.

While Wife raises four issues on appeal, the dispositive issue is whether the Trial Court erred in denying Wife's motion for relief under Tenn. R. Civ. P. 60.02 from the December 7, 2007 order.

Our standard of review as to a trial court's denial of a Tenn. R. Civ. P. 60.02 motion for relief from a judgment is set forth in *Henry v. Goins*, where our Supreme Court stated as follows:

In reviewing a trial court's decision to grant or deny relief pursuant to Rule 60.02, we give great deference to the trial court. *See Underwood v. Zurich Ins. Co.*, 854 S.W.2d 94, 97 (Tenn. 1993). Consequently, we will not set aside the trial court's ruling unless the trial court has abused its discretion. *See id.* An abuse of discretion is found only when a trial court has "applied an incorrect legal standard, or reached a decision which is against logic or reasoning that caused an injustice to the party complaining." *State v. Stevens*, 78 S.W.3d 817, 832 (Tenn. 2002) (quoting *State v. Shuck*, 953 S.W.2d 662, 669 (Tenn. 1997)). The abuse of discretion standard does not permit an appellate court to merely substitute its judgment for that of the trial court. *See Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001).

Henry v. Goins, 104 S.W.3d 475, 479 (Tenn. 2003).

In her brief on appeal, Wife argues, in part, that "Rule 60.02 (2) through (5) are or may be applicable in that [Wife] is worthy of relief from the operation of the lower court's judgment." However, Wife's motion for relief under Rule 60.02 filed in the Trial Court addresses only Rule 60.02(1) and (2), not sections (3), (4), and (5). Further, the transcript of the argument before the Trial Court on Wife's motion included in the record on appeal shows that Wife presented argument to the Trial Court on Rule 60.02(1) and (2) only. Wife may not raise grounds under Tenn. R. Civ. P. 60.02(3), (4), or (5) for the first time on appeal. As such, we consider only whether the Trial Court erred when it denied Wife relief under Tenn. R. Civ. P. 60.02(1) or (2).

In pertinent part, Tenn. R. Civ. P. 60.02 provides as follows:

On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

Tenn. R. Civ. P. 60.02.

In *Rogers v. Estate of Russell*, this Court observed that:

To set aside a judgment under Rule 60.02, the movant has the burden to prove that he is entitled to relief, and there must be proof of the basis on which relief is sought. *Banks v. Dement Const. Co., Inc.*, 817 S.W.2d 16, 18 (Tenn. 1991); *Federated Ins. Co. v. Lethcoe*, 18 S.W.3d 621, 623-624 (Tenn. 2000). A motion for relief from a judgment pursuant to Rule 60.02 addresses the sound discretion of the trial judge, and the scope of review on appeal is limited to whether the trial judge abused his discretion. *Banks*, 817 S.W.2d at 18. Rule 60.02 “was designed to strike a proper balance between the competing principles of finality and justice.” *Id.*, quoting *Jerkins v. McKinney*, 533 S.W.2d 275, 280 (Tenn. 1976). Rule 60.02 “acts as an escape valve from possible inequity that might otherwise arise from the unrelenting imposition of the principle of finality imbedded in our procedural rules.” *Id.*, quoting *Thompson v. Firemen’s Fund Ins. Co.*, 798 S.W.2d 235, 238 (Tenn. 1990). Because of the importance of this “principle of finality,” the “escape valve” should not be easily opened. *Id.*, quoting *Toney v. Mueller Co.*, 810 S.W.2d 145, 146 (Tenn. 1991).

Rogers v. Estate of Russell, 50 S.W.3d 441, 444-45 (Tenn. Ct. App. 2001). Further, as this Court noted in *Turner v. Turner*:

As a prerequisite to the extraordinary relief available under Rule 60.02(1), the movant is required to set forth in a motion or petition, or in affidavits in support thereof, facts explaining why the movant was justified in failing to avoid mistake, inadvertence, surprise or neglect. *Hopkins v. Hopkins*, 572 S.W.2d 639, 640 (Tenn. 1978).

Turner v. Turner, 776 S.W.2d 88, 92 (Tenn. Ct. App. 1988) (quoting *Travis v. City of Murfreesboro*, 686 S.W.2d 68, 69 (Tenn. 1985)).

In her brief on appeal, Wife presents some arguments that appear sound regarding why she should not have been held liable to Husband for \$18,762.00 in the December 7, 2007 Order. However, Wife chose not to appeal the Trial Court’s December 7, 2007 order. Wife also chose not to file a motion for a new trial or a motion to alter or amend the judgment. Instead, Wife waited almost seven months and then filed a motion seeking relief under Tenn. R. Civ. P. 60.02(1) and 60.02(2).

The Trial Court apparently conducted a full trial on Husband’s motion for reimbursement for taxes. Wife, who was represented by counsel at that time, participated in that trial and was able to present evidence and make arguments to the same extent as was Husband. In fact, the arguments now raised by Wife as to why she should not be liable to Husband for \$18,762.00 may have been presented to the Trial Court during the trial, but this Court has no way of knowing for certain because no transcript of the trial or statement of the evidence appears in the record on appeal. Wife was fully aware of the substance of the Trial Court’s December 7, 2007 order at a time when she could have chosen to take a timely appeal of that judgment. However, Wife made the choice to do nothing about the error she alleges for nearly seven months.

Wife has made no showing of the type of mistake, inadvertence, surprise or excusable neglect that would rise to a level justifying relief under Tenn. R. Civ. P. 60.02(1). In addition, Wife has shown no reason why she was justified in failing to avoid the mistake she now alleges occurred. Wife could have attempted to correct the alleged mistake by filing a timely motion to alter or amend the judgment or by taking a timely appeal of the Trial Court's December 7, 2007 order, but she chose not to take these steps. Additionally, Wife also has made no showing of fraud, misrepresentation, or other misconduct by Husband as required by Tenn. R. Civ. P. 60.02(2). What Wife instead has presented is her argument that the Trial Court erred in its December 7, 2007 Order. The correction of such a claimed error by a trial court is what an appeal is designed to address but is not the purpose of a Rule 60.02 motion.

Rule 60.02 is not for use by a party merely because he or she is dissatisfied with the results of the case. *Toney v. Mueller Co.*, 810 S.W.2d 145, 146 (Tenn. 1991); *NCNB National Bank of North Carolina v. Thrailkill*, 856 S.W.2d 150, 153 (Tenn. Ct. App. 1993). Wife is attempting to file a late appeal utilizing Rule 60.02 without any showing that she is entitled to relief under Rule 60.02. The purpose of Rule 60.02 is not to allow a party who has slumbered on her rights to take a late appeal. As our Supreme Court has stated more than once: "a party remains under a duty to take legal steps to protect his own interests." *Federated Ins. Co. v. Lethcoe*, 18 S.W.3d 621, 625 (Tenn. 2000) (quoting *Banks v. Dement Constr. Co.*, 817 S.W.2d 16, 19 (Tenn. 1991)). Wife did not take steps to correct the alleged error in the December 7, 2007 order in a timely manner and has made no showing of why she could not have done so. Any such alleged mistake was just as apparent to Wife on December 7, 2007 as it was on July 1, 2008.

As Wife has shown no reason why she is entitled to relief under either Tenn. R. Civ. P. 60.02(1) or 60.02(2), we find no abuse of discretion in the Trial Court's denial of Wife's motion for relief under Rule 60.02. We affirm the Trial Court's July 23, 2008 order.

Conclusion

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the Appellant, Patricia Jean Dubois, and her surety.

D. MICHAEL SWINEY, JUDGE